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DEPARTMENT OF STATE

Telephone

Memorandum of Conversation

DATE: Oct. 20, 22, 1947

SUBJECT: Option Feature of Paragraph 2 of the Military Service Article in the Proposed Treaty of Friendship, Commerce and Navigation with Italy.

PARTICIPANTS: Maj. Gen. Lewis B. Hershey, Director, Office of Selective Service Records;
Col. Daniel O. Omer, General Counsel, Office of Selective Service Records;
Herman Walker, CP.

COPIES TO: ITP - Mr. Wilcox
ITP - Miss Brewster

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The Italians pointed out that they do not have a process which is called "induction" in Italian conscription or mobilization procedures and suggested that some other term be used to signify the going into active service. The Italians further pointed out that under former procedures in Italy there was no appreciable interval between the time when notice to report for service is issued and the time when service technically or actually commences. Therefore, the Italians suggested that the "reasonable time" provided in the treaty should be restated so as to be in terms of the time immediately following notice to report rather than in terms of the time immediately prior to date of induction.

General Hershey's office advised:

A. After consultation with Dr. Gsovsky of the Legal Section of the Library of Congress it was felt that the word "induction" was about as satisfactory as any word that could be found. It should be understood in all military systems over the world. If an exact transliteration is not suitable in any given language, an appropriate translation could nevertheless be made. However, it would be satisfactory to state the idea in terms of "call-up" for service rather than in terms of notification of prospective "induction" into service. (Dr. Gsovsky is an accomplished linguist and an expert in military systems of various countries. Colonel Omer suggested that we might call him if we desired.)

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B. It is satisfactory to restate the "reasonable time" rule in terms of the time that runs from the receipt of notice. If the United States again follows the procedure of World War II, we can consider the time as having run before induction actually occurs. However, there is no objection even to allowing the option to take place after the man has actually been inducted into the armed forces. It would be merely a matter in the latter event of transferring the man to the army of his own country. As long as the treaty contains the sentence providing for a special agreement covering the details of the option system, the United States and the foreign military authorities can work out such arrangements as are appropriate.

C. General Hershey took occasion to remark that the whole military service article seems quite satisfactory.

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SUMMARY MINUTES

Twelfth Meeting in Negotiations Between the United States and Italian Delegations for a Treaty of Friendship, Commerce and Navigation.

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Approved

Participants:

For the United States: Messrs. Walmsley, Ainsworth, Setser.

For Italy: Messrs. Sorrentino, De Vera, De Rossi, Trinchieri, Melano, Maresca, Ippolito.

Time: 10:00 A.M., Wednesday, October 22, 1947.

Place: Palazzo Chigi.

Article I

The American delegation stated it was authorized to make the the following proposal involving Articles I and XXIV:

a) Transfer paragraph 4 of Article I to Article XXIV as new paragraph 7.

b) Add the following as a new paragraph 4, Article I:

4. The provisions of paragraph 1 of this article shall not be construed to preclude the exercise by either High Contracting Party of reasonable surveillance over the movement and sojourn of aliens within its territories or the enforcement of measures for the exclusion or explusion of aliens for reasons of public order, morals, health or safety.

c) Delete the phrase "subject to the provisions of paragraph 4 of this Article" in paragraph 1, Article I.

The Italian delegation stated that it considered these amendments acceptable.

Article III

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The Italian delegation stated that it would wish to see banking activities included in the list of activities for which national treatment is stipulated in paragraph 2. They stated that in case national treatment could not be provided for, they would wish to make it clear that most-favored-nation treatment would be accorded. The American negotiators stated that they were authorized to confirm in the minutes that banking activities are covered by the rule regarding most-favored-nation treatment in the first paragraph of this article. The Italian negotiators stated that, with this clarification a matter of records, the article was acceptable to them.

Article VII

The Italian delegation stated that the redraft of paragraph B of the substitute version of paragraph 1, submitted by the American delegation on October 17, was acceptable to their Government.

The Italian negotiators referred to their proposal made at the meeting on September 20 that a provision be added to this article to provide for mutual most-favored-nation treatment with regard to the acquisition and ownership of immovable property; stating that Article XXII of the Italo-American treaty of 1871 contained such provisions. The American negotiators expressed the view that the final paragraph of Article XXII of the former treaty referred only to treatment with regard to disposition and inheritance of real property, following the context of the first paragraph. It was pointed out in the course of the discussion, however, that the Italian version of the final paragraph of Article XXII differs from the English version in that the word "possedimento" or "possession" is used. The Italian negotiators pointed out that even if the paragraph should be construed to relate only to inheritance, the rule is more liberal than that contained in the draft treaty under discussion.

The American negotiators stated that they had not received instructions on the point, but that in communicating with their Government, they would again refer to the Italian proposal with regard to most-favored-nation treatment. They stated, however, that it had long been the policy of the United States to leave the State Governments very considerable freedom as to legislation on the subject of real property. They added that to the best of their knowledge, Italian nationals now receive most-favored-nation treatment in this matter throughout the United States, with the exception of matters relating to testate or intestate succession, with respect to which more favorable treatment is accorded to nationals of states having commercial treaties with the United States.

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Article XI

Article XI

Paragrapn (1). The American delegation, under instructions, clarified the position of the United States Government on the provisions of paragraph 1, as follows:

The American Government considers as of great importance the provisions in the treaty setting forth the unambiguous recognition by both High Contracting Parties of the principle of religious liberty and assuring adequate guaranties for its exercise. The rule proposed in the paragraph is intended to establish a reasonable minimum rule in this matter, which in practice is observed in both countries. Essentially, it embodies a very elementary right; namely freedom of conscience and worship for citizens and their right to establish and maintain their own churches for peaceful worship pursuant to their own faith. The paragraph would not accord rights in Italy to other than American nationals nor provide rights for proselytizing, or other activity outside the congregation which would bear on non-Americans. The term "other appropriate buildings" has reference to places of worship, is subject to interpretation according to the rule of reason and does not necessarily mean any building whatsoever at any location whatsoever.

The American negotiators stated that their Government has no desire to embarrass the Italian Government in its relations with any other State with respect to this matter and that it recognizes in relation to this Treaty that the subject should be considered in the light of the engagements of the Italian Government concerning the special character of the city of Rome. It stated that one must, finally and most importantly, not lose sight of the response of public opinion to any hint of restrictions with respect to these basic principles, which the American public holds very dear.

The Italian delegation stated that, after considering the statement of the American delegation, it was prepared to accept this paragraph if the words "or otherwise" in line 5 were deleted and if the words "or public order" were added at the end of the paragraph.

The American negotiators stated that they were authorized to agree to the addition of the words "or public order" and to the deletion of the words "or otherwise", provided it were made a matter of record that the provisions of the paragraph should be construed to assure the right to liberty of conscience and freedom of worship without molestation directly or indirectly because of religious belief.

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The Italian delegation concurred in that interpretation of the general intent of the provisions and stated that the paragraph as a whole was now considered acceptable.

Article XII

The American delegation stated that it was authorized to propose the following changes in Article XII:

a) Designate present material in this Article as paragraph 1.

b) Add the following as a new paragraph 2.

In addition to the rights and privileges provided in paragraph 1 of this Article, the nationals of either High Contracting Party shall, within the territories of the other High Contracting Party, be accorded, upon terms no less favorable than those applicable to nationals of such other High Contracting Party, the benefits of laws and regulations establishing systems of compulsory insurance, under which benefits are paid without an individual test of financial need: (a) against loss of wages or earnings due to old age, unemployment or sickness or other disability, or (b) against loss of financial support due to the death of father, husband or other person on whom such support had depended.

The Italian delegation stated that it would study the proposed amendment and would be prepared to discuss it further at a later meeting.

Article XVIII

The Italian delegation stated that the new draft of paragraph 3 submitted by the American delegation on October 17 was acceptable to their Government.

Article XXIV

Paragraph 1. The Italian negotiators referred to the provision proposed for inclusion in paragraph 1, which was submitted by the American delegation at the meeting on October 17 and stated that the word "treasures" would cause some difficulty, because of the fact that it could be interpreted to refer to objects of only the greatest value. The following suggestions for resolving the difficulty were informally considered.

A) Add the following to the Protocol:

The term "treasures" in subparagraph (b), paragraph 1, Article XXIV, shall be construed to include all objects

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objects whose value derives principally from their character as national antiquities, from their relationship to national history, or from their character as national works of art, and which are not in general practice considered articles of commerce;

b) Replace the previously submitted draft with the following:

(b) relating to the protection of the national historical and artistic patrimony.

The American negotiators stated that they would consult their Government with regard to the inclusion of some provision along the lines of those discussed.

Paragraph 3. Referring to subparagraph 3(d) as amended at the last meeting to include the State of Vatican City, the Italian delegation stated that it would wish to see it made a matter of record that the Italian Government should not be bound under the most-favored-nation clause to grant to nationals or institutions of the United States the privileges granted to the Holy See by the Lateran Pacts of 1929.

The American delegation agreed to consult their Government with regard to this interpretation of the exception for the State of Vatican City.

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October 23, 1947

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FOR DUNN AND SETSER

Ref Embtel 3158 Oct 9, Art XXIV. Dept reaffirms position Deptel 2017 Oct 9 concerning inclusion in present treaty specific preference former colonies. Ital proposal for new subpara quoted Embtel also unacceptable as implying approval spheres of influence. Moreover, any reference express or implied to Ital colonies might create erroneous impression that Italy and US had reached understanding regarding US policy towards disposition Ital colonies and future regime thereof. Aside from casting unfavorable reflection on US impartiality in premises, such impression might also disadvantage Ital aspirations re colonies.

Although Dept lacks enthusiasm at prospects additional material on preferences, Emb authorized at discretion add following mrk subpara to para 3 general exceptions art: QUOTE (E) advantages which conform with the criteria and procedures established by an International Trade Organization constituted as an agency of the United Nations and of which the two MCP are both members. UNQUOTE If this formula unacceptable Italy, Emb authorized propose following

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following alternative: QUOTE (E) advantages which, pursuant to decision made by the United Nations or an organ thereof or by an appropriate specialized agency in relationship with the United Nations, may hereafter be accorded by either HCP to areas other than those enumerated in subpara (D) of the present para. UNQUOTE

In case addition such new subpara, minutes should show US does not thereby prejudice its position concerning preferences former colonies either ITO or elsewhere.

Complementary to revised version Art XXV (territorial scope), words QUOTE Trust Territory of the Pacific UNQUOTE should be added to list of areas excepted on behalf US in subpara (D). While practical necessity probably slight, such addition technically desirable purposes complete accuracy

Present CFM deputy talks London on future Ital colonies only on procedural questions (composition investigating commission, reference terms, itinerary, etc.). Commission investigation expected last seven months.

Following for Emb guidance generally in minutes procedure: Dept wishes avoid incorporation in minutes of material which of itself constitutes international commitment distinct from commitments in treaty. Emb requested exercise care that material in minutes likely to be used in interpretin

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treaty

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treaty consists of explanations and clarifications apparent on face of treaty or constituting reasonable constructions thereof. Otherwise US might be obligated register minutes under Art 102 Charter United Nations.

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Acting

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